

ORIGINAL
RECEIVED

Before the

FEDERAL COMMUNICATIONS COMMISSION

JUN 25 1993

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In Re Applications of)	MM Docket No. 93-156
)	
TRINITY CHRISTIAN CENTER OF SANTA)	
ANA, INC., d/b/a TRINITY)	
BROADCASTING NETWORK)	BRCT-911129KR
)	
For Renewal of License of)	
Television Station WHSG(TV))	
Monroe, Georgia)	
)	
GLENDAL E BROADCASTING COMPANY)	BPCT-920228KE
)	
For Construction Permit)	
Monroe, Georgia)	

To: Hon. Joseph Chachkin
Administrative Law Judge

MOTION TO DISMISS APPLICATION

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity"), by its counsel, hereby moves to dismiss the application of Glendale Broadcasting Company ("Glendale") as ungrantable because Glendale is financially unqualified and could not now amend to cure that fatal defect.

A. Glendale's Financial Proposal

1. Glendale estimates the costs of construction and initial operation of its proposed Monroe station to be \$2,871,066.^{1/} To meet those costs, Glendale relies solely on

^{1/} See Glendale Application, Section III (Attachment 1 hereto).

No. of Copies rec'd 846
List A B C D E

a personal loan commitment from its president and majority stockholder, George F. Gardner. That commitment is contained in a letter dated February 26, 1992, from Gardner to his daughter

Monroe financial proposal to rely on any source other than Gardner's personal assets.

B. Glendale Is Not Financially Qualified

3. An applicant proposing to finance multiple applications must have sufficient available net liquid assets to fund all of them. Texas Communications Limited Partnership, 5 FCC Rcd 5876, 5878, 68 RR 2d 656, 658-59 (Rev. Bd. 1990). Thus, Glendale was not financially qualified when it filed its Monroe application unless Gardner was able to lend Glendale at least \$5,040,882 to satisfy his simultaneous funding commitments. As discussed below, Glendale's own application and related submissions make it abundantly clear that Glendale never ascertained Gardner's

Referring to his co-pending commitment to fund Glendale's proposed Miami station as well, Gardner adds that "I have more than sufficient assets to meet both loan commitments." Hence, Glendale was relying on Gardner's non-liquid personal assets to fund \$5,040,882 in combined estimated costs for both applications.

**2. Gardner Clearly Did Not Properly Ascertain
The Sufficiency of His Non-Liquid Assets**

5. It is well settled that non-liquid assets will not support an applicant's financial certification unless (a) such assets are unencumbered, are readily marketable, and have been independently professionally appraised, (b) the appraised value is discounted by one-third to account for potential future market fluctuations, (c) current liabilities are subtracted, and (d) the resulting amount is enough to meet the estimated costs. Central Florida Communications Group, Inc., FCC 93R-29, released June 18, 1993 (Rev. Bd.); Opal Chadwell, 4 FCC Rcd 1215, 65 RR 2d 1498 (1989); Christian Children's Network, Inc., 101 FCC 2d 612, 614 (1985); Texas Communications Limited Partnership,

6. On the face of Gardner's loan commitment letter (Attachment 2), it is apparent that Gardner did not obtain the necessary professional appraisals to ascertain whether his non-liquid assets were sufficient under Commission standards. While asserting in conclusory terms that "I have more than sufficient assets" and that "I have identified specific assets . . . that can be readily converted to cash or other liquid assets," the letter does not state either (a) that the assets have been appraised or (b) that Gardner had sufficient assets net of current liabilities to cover the loans. These omissions are telling, since reference to appraisals and "sufficient net assets" would have bolstered the obvious purpose of the letter, which was to demonstrate financial qualification.

7. Even more revealing is the notably unforthcoming response Glendale gave when challenged on its financial certification in the Miami proceeding. Glendale did not meet matters head-on by simply producing appraisals and documenting that Gardner had sufficient net assets. Nor did Glendale even describe the specific non-liquid assets Gardner had allegedly identified as being "unencumbered and [able to] be readily converted to cash or other liquid assets." Instead, Glendale sought to evade the issue by arguing that the petitioner had "failed to make a prima facie case" and was indulging in "sheer

speculation."^{5/} This conspicuous failure to present exonerating facts creates a very strong inference that in truth Gardner had not conducted appraisals and did not own sufficient assets net of current liabilities when he certified Glendale's financial qualifications. Washoe Shoshone Broadcasting, 3 FCC Rcd 3948, 3953, 64 RR 2d 1748, 1755 (Rev. Bd. 1988).^{6/}

8. Glendale will have one more chance, in response to this motion, to produce evidence rebutting the adverse inference that must plainly be drawn from the present record. However, to rebut that inference, Glendale will have to document that at the time it certified its financial qualifications: (a) Gardner had independent professional appraisals of his non-liquid assets in hand; (b) he had properly discounted the appraised value of his non-liquid assets in accordance with Commission standards; (c) he had determined that the non-liquid assets on which he relied were unencumbered and readily marketable; and (d) he had calculated that the properly discounted value of his non-liquid

^{5/} See Glendale's "Opposition to Contingent Motion To Enlarge Issues Against Glendale Broadcasting Company," filed June 7, 1993, in MM Docket No. 93-75, p. 10.

^{6/} In Washoe Shoshone, the Board applied the following principle of law from 2 WIGMORE ON EVIDENCE §285 (1940): "The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance, document, or witness, if brought, would have exposed facts unfavorable to the party."

assets, plus any available liquid assets, exceeded his current liabilities by at least \$5,040,882 (his total loan commitment at the time of certification). Failure to make a credible and persuasive showing to that effect will warrant a conclusive determination that Gardner did not properly ascertain his financial capacity before he certified Glendale's financial qualifications.^{1/}

C. The Application Is Subject to Summary Dismissal

9. Since Gardner certified without first properly assessing his financial resources in accordance with Commission standards, Glendale's application is subject to summary dismissal. The certification had no cognizable basis, because Gardner had not taken the required steps to verify that his non-liquid assets were in fact sufficient by Commission standards to cover his simultaneous loan commitments. Under the circumstances, Glendale was not entitled to check "yes" to the financial certification question on the application form,

^{1/} That determination may be made without conducting an evidentiary hearing. In assessing whether a hearing is required on a point in issue, the Commission is empowered to consider all materials before it and to draw factual and legal inferences from undisputed facts. Gencom, Inc. v. FCC, 832 F.2d 171, 180-81 (D.C. Cir. 1987); Citizens for Jazz on WRVR v. FCC, 775 F.2d 392, 394-96 (D.C. Cir. 1985). Here, based on everything before it (including Glendale's failure to produce appraisals), the Commission may unquestionably infer the fact that George Gardner conducted no appraisals of his non-liquid assets prior to filing Glendale's application -- a fact that Glendale has not disputed.

although it did so anyway. The most it could properly have done was leave the question unanswered (or check "no").

10. If Glendale had answered the financial certification question properly (as it should have), the Commission would have rejected the application, because failure to certify in the affirmative as to financial qualifications is a basic tenderability defect. In the Matter of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853, 3859, 66 RR 2d 519, 529 (1989) ("if an applicant fails to certify in the application that it is financially qualified . . . its application will be returned as unacceptable or non-tenderable") (emphasis added). Glendale's application was accepted for filing only because Glendale masked a tenderability defect by making a false certification. With that defect now exposed, the application must be dismissed. Otherwise, Glendale will be handsomely rewarded for its dishonesty.^{8/}

^{8/} An applicant has no right to a hearing when its application contains a tenderability defect. The Taber Broadcasting Co. of New Mexico, 4 FCC Rcd 7892 (1989); Salzer v. FCC, 778 F.2d 869, 877 (D.C. Cir. 1985) ("It is well settled that to be entitled to consideration with other mutually acceptable [sic] applications, a proposal must meet the FCC's criteria of acceptability by the cut-off date established"). Likewise, an applicant is not entitled to a hearing if undisputed facts show that the application is ungrantable under Commission rules or policies. United States v. Storer Broadcasting Co., 351 U.S. 192, 205 (1956) ("We do not think Congress intended the Commission to waste time on applications that do not state a valid basis for a hearing").

11. Dismissal is also required by the well-settled policy under which an applicant will be summarily dismissed when it has not established its financial qualifications and lacks good cause to amend. Capitol City Broadcasting Company, 7 FCC Rcd 2629, 70 RR 2d 1429 (1992); Sharron Annette Haley, 6 FCC Rcd 4630 (1991); Carol Sue Bowen, 6 FCC Rcd 10, 11-12, 68 RR 2d 1240. 1242-43 (Rev. Bd. 1991); Marc A. Albert, 6 FCC Rcd 13, 14,

D. Conclusion

12. For the foregoing reasons, the Presiding Judge should summarily dismiss Glendale's application as ungrantable because Glendale was not financially qualified when it certified and cannot cure that defect.

Respectfully submitted,

TRINITY CHRISTIAN CENTER OF SANTA
ANA INC., d/b/a TRINITY
BROADCASTING NETWORK

By: Colby M. May
Colby M. May
Joseph E. Dunne, III *J hz*

May & Dunne, Chartered
1000 Thomas Jefferson Street,
N.W. - Suite 520
Washington, D.C. 20007
(202) 298-6345

By: Nathaniel F. [Signature]

2000

ATTACHMENT 1

Glendale Application, Section III

LAW OFFICES
COHEN AND BERFIELD, P.C.

BOARD OF TRADE BUILDING

1129 20TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 466-8565

TELECOPIER
(202) 785-0934

LEWIS I. COHEN
MORTON L. BERFIELD
ROY W. BOYCE
JOHN J. SCHAUBLE*

*VIRGINIA BAR ONLY

February 27, 1992

Federal Communications Commission
Mass Media Services
P.O. Box 358165
Pittsburgh, PA 15251-5165

Dear Sir/Madam:

On behalf of Glendale Broadcasting Company, we are submitting an original and two copies of an application for a construction permit for a new commercial television station on Channel 63 at Monroe, Georgia. The tendered application is timely filed pursuant to Section 73.3516(e) of the Commission's rules and is mutually exclusive with the pending renewal application of WHSG-TV, Monroe, Georgia.

A check for \$2,535 is enclosed as payment of the hearing fee, along with FCC Form 155.

Should there be any questions, kindly communicate directly with this office.

Respectfully submitted,



SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 2,871,066

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
George F. Gardner 500 Glendale Street Carlisle, PA 17013	(717) 245-2723	Shareholder, Officer and Director	\$2,871,066

ATTACHMENT 2

Glendale Application, Exhibit 4

EXHIBIT 4

February 26, 1992

Ms. Mary Anne Adams
Vice President
Glendale Broadcasting Company
469 E. North Street
Carlisle, PA 17013

Dear Mary Anne:

This is in connection with Glendale Broadcasting Company's application for a new television station in Monroe, GA.

The sum of \$2,871,066 will be required to meet the construction and initial operation costs for three months. I am willing to loan to Glendale Broadcasting Company up to that amount for construction and initial operations costs. The loan will be for a five-year period at 9% interest. No collateral will be required. No principal or interest need be paid until the station has been broadcasting for six months. I have more than sufficient assets to meet this commitment. While I do not have net liquid assets totaling this amount, I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment. I am willing to sell such assets as are necessary to meet this commitment.

I intend to loan Glendale Broadcasting Company sufficient funds as it prosecutes its Monroe, GA application to meet all of its expenses on an ongoing basis.

Ms. Mary Anne Adams
Page Two
February 26, 1992

This letter does not modify any of the terms of my
letter to you dated December 20, 1991, regarding my
obligation to loan Glendale Broadcasting Company
sufficient funds to construct a new station.

ATTACHMENT 3

Glendale Miami Application, Section III and Exhibit 4

Ref. Room

LAW OFFICES

COHEN AND BERFIELD, P.C.

BOARD OF TRADE BUILDING

1129 20TH STREET, N.W.

WASHINGTON, D.C. 20036

(202) 466-6565

LEWIS I. COHEN
MORTON L. BERFIELD
ROY W. BOYCE
JOHN J. SCHAUBLE*

*VIRGINIA BAR ONLY

TELECOPIER
(202) 785-0934

December 27, 1991

Federal Communications Commission
Mass Media Services
P.O. Box 358165
Pittsburgh, PA 15251-5165

JAN 2 10 16 AM '92

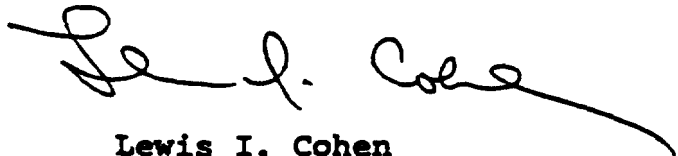
Dear Sir/Madam:

On behalf of Glendale Broadcasting Company, we are submitting an original and two copies of an application for a construction permit for a new commercial television station on Channel 45 at Miami, Florida. The tendered application is timely filed pursuant to Section 73.3516(e) of the Commission's rules and is mutually exclusive with the pending renewal application of WHFT, Miami, Florida.

A check for \$2,535 is enclosed as payment of the hearing fee, along with FCC Form 155.

Should there be any questions, kindly communicate directly with this office.

Respectfully submitted,



Lewis I. Cohen

Enclosures

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 2,169,81

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
George F. Gardner 500 Glendale Street Carlisle, PA 17013	717-245-2723	Shareholder, Officer and Director	\$ 2,169,81
The Firestone Company 3932 Oxford Lane San Bernardino, CA 92404	714-882-3045	Equipment Lessor	\$1,156,400
SEE EXHIBIT 4			

EXHIBIT 4

December 20, 1991

Ms. Mary Anne Adams
Vice President
Glendale Broadcasting Company
469 E. North Street
Carlisle, PA 17013

Dear Mary Anne:

This is in connection with Glendale Broadcasting Company's application for a new television station in Miami.

The sum of \$2,169,816 will be required to meet the construction and initial operation costs for three months. I am willing to loan to Glendale Broadcasting Company up to that amount for construction and initial operation costs. The loan will be for a five year period at 9% interest. No collateral will be required. No principal or interest need be paid until the station has been broadcasting for six months. I have more than sufficient assets to meet this commitment. While I do not have net liquid assets totaling this amount, I have more than sufficient assets which I can sell to meet this loan commitment. I have identified specific assets which are unencumbered and that can be readily converted to cash or other liquid assets. The sale of those assets would provide me with sufficient liquid assets to meet this loan commitment. I am willing to sell such assets as are necessary to meet this commitment.

I am also aware that The Firestone Company is proposing to lease Glendale Broadcasting Company its equipment. The cost to purchase this equipment is \$1,156,400. To the extent Glendale Broadcasting Company utilizes the leasing arrangement with The Firestone Company, that will reduce the loan requirements of

Page 2

Glendale Broadcasting Company to \$1,219,839. That total would include the first six lease payments of \$206,423 to The Firestone Company, as well as post-grant, pre-operation expenses and costs of operation for 90 days.

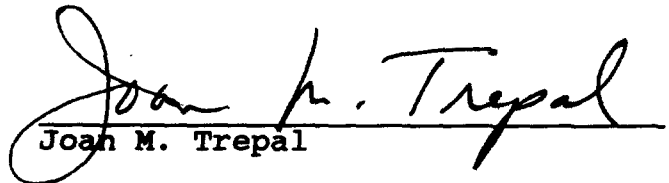
CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, hereby certify that on this 25th day of June, 1993, copies of the foregoing "Motion to Dismiss Application" were sent by first class mail, postage prepaid, to the following:

* The Honorable Joseph Chachkin
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.--Room 226
Washington, D.C. 20554

* James Shook, Esq.
Gary Schonman, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.--Room 7212
Washington, D.C. 20554

Lewis I. Cohen, Esq.
John J. Schauble, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036


Joan M. Trepal

* Hand Delivered.